

JACK DEVAULT
DOROTHY DEVAULT

IBLA 83-281

Decided April 28, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 113567, A MC 113568.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim: Mining Claims: Abandonment

Where a mining claim was located in September 1980, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1981, a notice of intention to hold the claim or evidence of assessment work performed during 1981, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim-- Mining Claims: Abandonment

With respect to unpatented mining claims located after Oct. 21, 1976, the fact that the requirement for performing assessment work under the mining law has not yet accrued does not obviate the necessity of filing either a notice of intention to hold the claim or evidence of assessment work both in the local recording office where the notice of

location is recorded, and in the proper BLM office, prior to Dec. 31 of the year following the calendar year in which the claim was located, as required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

APPEARANCES: Jack Devault and Dorothy Devault, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack Devault and Dorothy Devault appeal the decision of December 14, 1982, wherein the Arizona State Office, Bureau of Land Management (BLM), declared the unpatented Devault Nos. 24 and 25 placer mining claims, A MC 113567 and A MC 113568, abandoned and void because no notice of intention to hold the claims or evidence of assessment work was filed with BLM in 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located September 2, 1980, and were recorded with BLM November 5, 1980. The claims are situated in sec. 18, T. 10 N., R. 4 W., Gila and Salt River meridian, Yavapai County, Arizona.

Appellants state they thought the proof of labor for the subject claims was sent to BLM with the proofs of labor for their contiguous claims.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

As the claims herein were located September 2, 1980, a proof of labor or notice of intention to hold the claims was required to be recorded both in the records of Yavapai County, Arizona, and with BLM prior to December 31, 1981. As no filings were made with BLM, the claims were properly deemed to be abandoned.

[2] The mining law does not require performance of assessment work until the assessment year commencing at noon September 1, first succeeding the date of location of the claims, 30 U.S.C. § 28 (1976), so appellants were not required to perform assessment work until sometime during the year running from September 1, 1981, to September 1, 1982. However, this does not obviate the necessity for compliance with section 314 of FLPMA, requiring either an affidavit of assessment work performed or a notice of intention to hold the claims to be filed both with the local recording office and with BLM on or before December 30, 1981, since 1981 is the year following the calendar year in which the claims were located. Evelyn Parent, supra; Ted Dilday, 56 IBLA 337, 88 I.D. 682 (1981).

Appellants may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Gail M. Frazier
Administrative Judge.

